

Order

Entered: June 29, 2004

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

ADM File No. 2004-15

Amendment of Rule 6.429
of the Michigan Court Rules

On order of the Court, the need for immediate action having been found, the notice requirements are dispensed with and the following amendment of Rule 6.429 of the Michigan Court Rules is adopted, effective immediately. MCR 1.201(D). The amendment will be considered at a future public hearing by the Court. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Rule 6.429 Correction and Appeal of Sentence

(A)-(B) [Unchanged].

- (C) Preservation of Issues Concerning ~~Presentence Report and Sentencing Guidelines Scoring and Information Considered in Sentencing~~. A party ~~may~~ shall not raise on appeal an issue challenging the accuracy of the ~~presentence report or the scoring of the sentencing guidelines or~~ challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at or before sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals. or demonstrates that the challenge was brought as soon as the inaccuracy could reasonably have been discovered. Any other challenge may be brought only by motion for relief from judgment under subchapter 6.500.

WEAVER, J., states: I would publish the rule amendment for comment rather than making it effective immediately. This amendment of MCR 6.429(C) conforms the rule to MCL 769.34(10). For the reasons set forth in my dissent in *People v Kimble*, 470 Mich ____ (2004), I would hold that MCL 769.34(10) requires that defendants preserve alleged errors in scoring of offense variables and, therefore, would interpret the amended court rule to similarly require that defendants preserve such errors.

CAVANAGH and KELLY, JJ., state: We would publish the rule amendment for comment rather than making it effective immediately.

Staff Comment: The June 29, 2004 amendment of MCR 6.429(C), effective immediately, conformed the rule to MCL 769.34(10) by incorporating the statutory language.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 29, 2004

Angela Z. Meyer
Deputy Clerk